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No. 3780

1305

United States  
**Circuit Court of Appeals**  
 For the Ninth Circuit. /

SARAH POOL,

Appellant,

vs.

JAMES A. WALSH, as Collector of Internal Revenue of Montana,

Appellee.

**Transcript of Record.**

Upon Appeal from the United States District Court for the District of Montana.

**FILED**  
 JAN 21 1922  
 F. D. MONCKTON,  
 CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

SARAH POOL,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Solicitors of Record**

Messrs. PATTERSON & HEYFRON, Missoula,  
Montana, and

Messrs. RUSSELL, MADEEN & BARRON,  
Missoula, Montana,

Solicitors for Complainant and Appellant.

JOHN L. SLATTERY, Esq., United States  
Attorney for the District of Montana, Helena,  
Montana, and

RONALD HIGGINS, Esq., and W. H. MEIGS,  
Esq., Assistant United States Attorneys for the  
District of Montana, Helena, Montana,

Solicitors for Defendant and Appellee.

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In the District Court of the United States, District  
of Montana.

No. 193—IN EQUITY.

SARAH POOL,

Complainant,

vs.

JAMES A. WALSH, as Collector of Internal  
Revenue,

Defendant.

BE IT REMEMBERED, that on April 23, 1921,  
bill of complaint was filed herein; in the words and  
figures following, to wit: [1\*]

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\*Page-number appearing at foot of page of original certified Transcript  
of Record.

In the District Court of the United States, for the  
District of Montana.

SARAH POOL,

Plaintiff,

vs.

JAMES A. WALSH, as Collector of Internal  
Revenue,

Defendant.

**Bill in Equity.**

Your petitioner, Sarah Pool, respectfully shows  
to the Court as follows, to wit:

I.

That she is a citizen of the United States and of  
the State of Montana, and resides in Missoula  
County, Montana, and is, and at all times herein-  
after mentioned has been, the lawful wife of Frank  
E. Pool, and as his wife, has been living with said  
Frank E. Pool.

II.

That the defendant is the duly appointed, quali-  
fied and acting Collector of Internal Revenue for  
the District and State of Montana.

III.

That for a long time prior to the fourteenth day  
of April, 1921, the plaintiff in this action, was the  
owner and holder of two certain certificates of de-  
posit, one for the sum of Thirteen Hundred  
(\$1300.00) Dollars, and the other for the sum of  
One Thousand (\$1000.00) Dollars, totaling Twenty-



three Hundred (\$2300.00) Dollars, in the Missoula Trust and Savings Bank, in the City of Missoula, and State of Montana, and that such certificates of deposit were and are, the sole and individual property of this petitioner.

IV.

That on or about the fourteenth day of April, 1921, the defendant in this action, as Collector of Internal Revenue for the District of Montana, wrongfully, illegally and without authority therefor, attached by distraint said certificates of deposit and has notified and instructed the said Bank, holding said certificates of deposit, to retain the same in the custody of said Bank, and not deliver them to the petitioner herein. That the said Collector of Internal Revenue in pursuance of such attachment and warrant of distraint, has given notice and threatened and does now threaten to, and will unless restrained, [2] on the eleventh day of May, A. D. 1921, sell said certificates of deposit, to satisfy a purported claim against the husband of this petitioner, Frank E. Pool.

V.

That said pretended warrant for distraint is and was issued and levied upon the said premises under and upon the pretended claim that your petitioner's husband was chargeable with and indebted to the United States for taxes and penalties purported to have been assessed and charged against him by the defendant, for alleged violation of the Internal Revenue Laws of the United States, by the illicit man-

ufacture of intoxicating liquors, but your petitioner, upon her oath alleges and shows to the Court that she is not liable for any taxes or penalties for violation of said laws; that no taxes have been assessed against her by the United States, or any of its officers, and that your petitioner is not liable or chargeable with any taxes or penalties; and that said purported warrant of distraint, and the proceedings thereunder are not based upon any tax, but upon a penalty or fine purported to be imposed against your petitioner's husband for violation of laws, and your petitioner further alleges that said warrant for distraint was without authority of law, wrongfully issued, and wrongfully and illegally levied upon the property of your petitioner; and that the threatened sale of said property is wrongful and without authority of law, and if permitted to be consummated by sale, will work a grievous hardship and irreparable injury to your petitioner.

#### VI.

That no civil or criminal suit or action has been commenced by said defendant to determine your petitioner's liability to any tax or penalty.

#### VII.

That your petitioner has no personal property, nor any fund with which to pay said pretended claim of said defendant, and is unable to pay the same, and that if said property is sold as threatened, your petitioner will be deprived thereof without due process of law.

## VIII.

That the proposed action of the defendant in selling said property, as hereinbefore set forth, without your petitioner having a day in [3] Court or opportunity to have her rights heard and determined by a competent court, is in violation of and contrary to the Fifth Amendment to the Constitution of the United States and the Bill of Rights, and constitutes taking her property without due process of law, and that this plaintiff has no adequate or speedy remedy at law.

## IX.

That the proposed action of the defendant in selling the said property, and the said pretended warrant and levy of distraint as hereinbefore set forth, is in truth and in fact a punishment of your petitioner for her husband's crime in operating an illicit still and otherwise violating the National Prohibition Act, without a trial by jury and if the same be committed, your petitioner will be punished for an offense which she has never committed, and which she is not charged, or alleged to have committed.

## X.

That your petitioner is advised by her attorneys and believes it to be true that it is impossible to serve the required notice of five days upon the defendant, of the application of her injunction but in absolute good faith asks the Court to make such injunction temporary and preliminary until such time as notice can be given and hearing had thereon.

WHEREFORE, This petitioner prays this Honorable Court for an order restraining and enjoining the defendant, James A. Walsh, Collector of Internal Revenue for the District of Montana, from any further proceedings whatsoever in pursuance of the said pretended writ of attachment and warrant for distraint, and from selling, or attempting to sell said certificates of deposit, and that upon the answer and return of the defendant, that the Court decree and direct that said certificates of deposit be forthwith, delivered to this petitioner, and that she have and recover her costs and disbursements herein.

PATTERSON and HEYFRON,  
 RUSSELL, MADEEN & BARRON,  
 Solicitors and Attorneys for Complainant.

State of Montana,  
 County of Missoula,—ss.

Sarah Pool, being first duly sworn upon oath, deposes and says: [4]

That she is the complainant named and mentioned in the above and foregoing bill in equity; that she has read the same and knows the contents thereof, and that the same is true of her own knowledge.

SARAH POOLE.

Subscribed and sworn to before me this 22d day or April, A. D. 1921.

[Notarial Seal] DAN J. HEYFRON,  
 Notary Public for Montana, Residing at Missoula,  
 Therein.

My commission expires October 25, 1921.

Filed April 23, 1921. C. R. Garlow, Clerk.

Service accepted and copy received April 23, 1921.

GEORGE F. SHELTON,  
United States Attorney.

---

Thereafter, on April 23, 1921, order to show cause and temporary restraining order was filed herein, being in the words and figures following, to wit:  
[5]

In the District Court of the United States for the  
District of Montana.

SARAH POOL,

Plaintiff,

vs.

JAMES A. WALSH, as Collector of Internal  
Revenue,

Defendant.

**Order to Show Cause and Temporary Restraining  
Order.**

The complainant having filed her verified bill of complaint in this court against the defendant above named praying for a preliminary injunction, restraining and enjoining the defendant from levying upon, selling and disposing of her personal property, consisting of two certificates of deposit, in the Missoula Trust and Savings Bank, in the City

of Missoula, and State of Montana, and this Court having duly read and considered said bill of complaint,—

IT IS HEREBY ORDERED, That the defendant James A. Walsh, above named, show cause before this court in the courtroom of said court at Helena, Montana, on the 27th day of April, 1921, at ten o'clock in the forenoon of that day, why he, the said defendant, and all persons acting by, through or under him, should not be restrained and enjoined in accordance with the prayer in said bill of complaint contained, to wit:

“For an order restraining and enjoining the defendant, James A. Walsh, Collector of Internal Revenue for the District of Montana, from any further proceedings whatsoever in pursuance of the said pretended writ of attachment and warrant for distraint, and from selling, or attempting to sell, said certificates of deposit, and that upon the answer and return of the defendant, that the Court decree and direct that said certificates of deposit be forthwith delivered to this petitioner and that she have and recover her costs and disbursements herein.”

Let a copy of this order, and a copy of the bill of complaint be forthwith served upon the above-named defendant, James A. Walsh, by the marshal of this court.

Entered this 23d day of April, A. D. 1921.

BOURQUIN,

Judge.

Received copy and service accepted April 23d,  
1921.

GEORGE F. SHELTON,  
United States Attorney.

Filed April 23, 1921. C. R. Garlow, Clerk. [6]

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Thereafter, on April 27, 1921, answer to order to show cause was duly filed herein, in the words and figures following, to wit:

In the District Court of the United States, District  
of Montana.

SARAH POOL,

Complainant,

vs.

JAMES A. WALSH, as Collector of Internal  
Revenue,

Defendant.

**Answer to Plaintiff's Order to Show Cause.**

Now comes James A. Walsh, Collector of Internal Revenue, and for reply to the order to show cause heretofore issued, avers as follows:

That he is the duly appointed, qualified and acting Collector of Internal Revenue for the State and District of Montana; that there was duly imposed by the Commissioner of Internal Revenue, pursuant to law, a tax upon the said Sarah Pool, the plaintiff above named, under the Revenue Laws of the United States.

That a warrant of distraint was issued for the collection of said tax, pursuant to law, by James A. Walsh, Collector of Internal Revenue for the District of Montana, as aforesaid and duly levied upon the property mentioned and described in the plaintiff's bill in equity, filed herein.

That pursuant to the authority vested in him as Collector of Internal Revenue, the said James A. Walsh advertised the said certificates of deposit in said complaint mentioned, for sale, and published notice thereof as required by law.

That this suit is brought to restrain the said Collector of Internal Revenue from proceeding with the said sale in his efforts to collect the said tax so imposed, as aforesaid, upon the said plaintiff, Sarah Pool, and not otherwise.

That the said Sarah Pool has not paid the said tax or any part thereof, and the same is wholly uncollected at this time.

That the Court has no jurisdiction to restrain the said collection of said tax so imposed, as aforesaid, and the said order to show cause should be denied, and the restraining order heretofore issued should be vacated.

GEORGE F. SHELTON,  
United States Attorney, District of Montana. [7]

United States of America,  
District of Montana,—ss.

James A. Walsh, being first duly sworn, on oath deposes and says:

That he is the duly appointed, qualified and acting



Collector of Internal Revenue for the District of Montana, and as such makes this verification to the foregoing answer to plaintiff's order to show cause; that he knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

JAS. A. WALSH.

Subscribed and sworn to before me this 27th day of April, 1921.

[Seal]

C. R. GARLOW,  
Clerk.

Filed April 27, 1921. C. R. Garlow, Clerk.

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Thereafter, on April 27, 1921, motion to dismiss the bill of complaint was duly filed herein, being in the words and figures following, to wit: [8]

In the District Court of the United States, District of Montana.

SARAH POOL,

Plaintiff,

vs.

JAMES A. WALSH, as Collector of Internal Revenue,

Defendant.

**Motion to Dismiss Bill of Complaint.**

Now comes the above-named defendant, and pursuant to equity Rule No. 29, moves the Court to dismiss the bill of complaint herein, for the reason

that it appears upon the face of the complaint that the suit is brought for a purpose expressly forbidden by law, and that the Court has no jurisdiction to proceed the said suit.

GEORGE F. SHELTON,

United States Attorney, District of Montana.

Dated this 27th day of April, 1921.

Received copy April 27, 1921.

RUSSELL, MADEEN & BARRON,

PATTERSON & HEYFRON,

Attorneys for Plaintiff.

Filed April 27, 1921. C. R. Garlow, Clerk. [9]

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Thereafter, on May 3d, 1921, the cause was duly heard and submitted to the Court, the record thereof being as follows, to wit:

In the District Court of the United States in and  
for the District of Montana.

No. 193.

SARAH POOLE

vs.

JAS. A. WALSH,

Collector, etc.

**Hearing.**

This cause came on regularly for hearing this day on the order to show cause heretofore continued until this date, C. A. Russell, Esq., appearing for the plaintiff, and Geo. F. Shelton, Esq., appearing

for the defendant. Thereupon Sarah Poole was sworn and examined as a witness for plaintiff, and two notices and demands introduced in evidence, whereupon plaintiff rested. Thereupon James A. Walsh was sworn and examined as a witness for defendant; a copy of warrant, a tax lien, a letter and assessment list, introduced, whereupon the evidence being closed, the matter was argued and submitted and by the Court taken under advisement.

Entered in open court this 3d day of May, A. D. 1921.

C. R. GARLOW,  
Clerk. [10]

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Thereafter, on May 9th, 1921, Court ordered that injunction be denied and suit dismissed, the record thereof being as follows, to wit:

In the District Court of the United States in and  
for the District of Montana.

No. 193.

SARAH POOLE

vs.

JAS. A. WALSH,

Col. Intr. Rev.

**Order Denying Injunction and Dismissing Suit.**

This matter heretofore duly heard and submitted to the Court came on at this time for judgment and decision. Thereupon, the Court, after due consid-

eration, ordered that injunction be denied and suit dismissed, in accordance with written decision filed.

Entered in open court this 9th day of May, A. D. 1921.

C. R. GARLOW,  
Clerk. [11]

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Thereafter, on May 9, 1921, Court filed its decision as follows, to wit:

POOL

vs.

WALSH, Collector.

#### **Decision.**

Plaintiff seeks to enjoin defendant from collecting certain taxes and penalties assessed and levied against her by the Commissioner of Internal Revenue, based upon her alleged distillation of intoxicating liquors. She alleges the taxes and penalties are illegal and not owed by her, in that she never engaged in any said operations of distillation, and also that the collection by distraint is oppressive and a hardship.

The statute is, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." Sec. 3224, R. S. U. S.

The statute is a bar to the suit. Plaintiff has a remedy in the statutes that provide she shall pay the tax, apply to the Commissioner for refund, then sue to recover. This is exclusive, and justified by

the necessity of revenue to carry on the Government, the collection of which must not be prevented even temporarily by injunction.

The Supreme Court decisions are conclusive.

See *Dodge vs. Osburn*, 240 U. S. 119.

*Snyder vs. Marks*, 109 U. S. 189.

In the first case, plaintiff alleged the tax law was unconstitutional, and in the second case he alleged he was not a member of the firm upon which the tax was levied. In brief, that the tax was illegal and not owed, and injunction denied in both. In assessment and levy of taxes the Commissioner acts judicially, determines for himself who is and who is not taxable, and his decision controls until suit after payment and to recover. The Commissioner makes the assessment. He is not limited to the collector's report of taxable persons made to him, but is authorized and directed to assess and otherwise discovered by him and which the collector has failed to report. Our C. C. A. indicates the taxes and penalties can now be assessed and collected as before prohibition.

*Farley vs. U. S.*, 269 Fed. 723.

(See *Id.* 153.) [12]

So it is not a case of no law for the tax, and mere arbitrary and illegal action by the Commissioner. Injunction denied; suit dismissed.

May 9, 1921.

BOURQUIN,  
Judge.

Filed May 9, 1921. C. R. Garlow, Clerk. By H. H. Walker, Deputy. [13]

Thereafter, on May 10, 1921, decree was duly filed and entered herein, being in the words and figures following, to wit:

In the District Court of the United States, District of Montana.

No. 193.

SARAH POOL,

Plaintiff,

vs.

JAMES A. WALSH, as Collector of Internal Revenue,

Defendant.

**Decree.**

This cause coming on to be heard, upon the motion of the defendant to dismiss the bill, and the case having been argued by counsel and submitted to the Court for decision, and at the same time the application of the plaintiff for a restraining order herein pending, the suit having also come on to be heard, and the law and the premises being fully understood by the Court,—

IT IS ORDERED, ADJUDGED AND DECREED that the application of the plaintiff for a restraining order herein be denied, and the motion of the defendant to dismiss the bill herein is hereby granted.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the bill of complaint herein be and the same is hereby dismissed.

Dated this 10th day of May, 1921.

BOURQUIN,  
Judge.

Filed May 10, 1921. C. R. Garlow, Clerk.

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Thereafter, on May 31st, 1921, petition for appeal was duly filed herein, being in the words and figures following, to wit: [14]

In the District Court of the United States for the  
District of Montana.

IN EQUITY.

SARAH POOL,

Complainant,

vs.

JAMES A. WALSH, as Collector of Internal  
Revenue,

Defendant.

**Petition for Appeal.**

To the Honorable GEORGE M. BOURQUIN, Dis-  
trict Judge:

The above-named plaintiff, Sarah Poole, feeling aggrieved by the decree rendered and entered in the above-entitled cause on the 9th day of May, 1921, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons and upon the grounds set forth in the assignment of errors filed herewith, and she prays that her appeal be allowed, and that citation be

issued as provided by law and that a transcript of the records, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals sitting at San Francisco, under the rules of such court in such case made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of her be made.

DAN J. HEYFRON,

RUSSELL, MADEEN & BARRON,

Solicitors and Counsel for Complainant and Appellant.

DAN J. HEYFRON and

RUSSELL, MADEEN & BARRON,

Missoula, Montana.

Filed May 31st, 1921. C. R. Garlow, Clerk.

Thereafter, on May 31, 1921, assignment of errors was duly filed herein, being in the words and figures following, to wit: [15]

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In the District Court of the United States for the District of Montana.

SARAH POOL,

Complainant,

vs.

JAMES A. WALSH, as Collector of Internal Revenue,

Defendant.



**Assignment of Errors.**

Comes now the complainant in the above-entitled cause and files the following assignment of errors upon which she will rely upon her prosecution of the appeal in the above-entitled cause from the decree made by this Honorable Court on the 9th day of May, 1921, dismissing complainant's bill of complaint.

**I.**

The Honorable United States District Court for the District of Montana erred in dismissing complainant's suit.

**II.**

The Honorable United States District Court for the District of Montana erred in holding and deciding that section 3224, Revised Statutes of the United States, precludes complainant and appellant from relief by injunction.

**III.**

The Honorable United States District Court for the District of Montana erred in holding and deciding that the charges and assessments described and set forth in the warrant for distraint annexed to the bill of complaint, are taxes and assessable as taxes, and collectible by warrant for distraint, and in dismissing plaintiff's bill of complaint on that ground.

**IV.**

The Honorable United States District Court for the District of Montana erred in holding and deciding that the charges and impositions mentioned and

set forth in Title II, Section 35, of the National Prohibition Act are taxes and may be enforced by sale of complainant's property by warrant for distraint and in dismissing complainant's bill of complaint on that ground. [16]

## V.

The Honorable United States District Court for the District of Montana erred in holding and deciding that a sale of plaintiff's property under the levy of a warrant for distraint by the Collector of Internal Revenue for the District of Montana, without any action in court, and without giving the plaintiff a day in court, or opportunity to be heard is not illegal and without authority of law, and is not violative of the Constitution of the United States particularly the Fifth, Sixth, Eighth and Eighteenth Amendments and in dismissing plaintiff's bill of complaint on that ground.

## VI.

The Honorable United States District Court for the District of Montana erred in holding and deciding that plaintiff's only remedy is that of payment of the tax, and penalty, and suing for a refund of such payment and in dismissing plaintiff's suit on that ground.

## VII.

The Honorable United States District Court for the District of Montana erred in holding and deciding that complainant's bill in equity did not state a cause of action entitling plaintiff to the relief sought.

VIII.

The Honorable United States District Court for the District of Montana erred in dismissing complainant's suit on the ground and for the reasons that in law and equity plaintiff is entitled to the relief sought.

DAN J. HEYFRON,  
RUSSELL, MADEEN & BARRON,  
Solicitors and Attorneys for Complainant and Appellant.

DAN J. HEYFRON,  
RUSSELL, MADEEN & BARRON,  
Solicitors and Attorneys for Complainant and Appellant, Missoula, Montana.

Filed May 31, 1921. C. R. Garlow, Clerk. [17]

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Thereafter, on June 3, 1921, order allowing appeal was duly filed herein, being in the words and figures following, to wit:

In the District Court of the United States, District of Montana.

IN EQUITY.

SARAH POOL,

Complainant,

vs.

JAMES A. WALSH, as Collector of Internal Revenue,

Defendant.

**Order Allowing Appeal.**

On motion of Dan J. Heyfron and Chas. A. Russell, solicitors and counsel for complainant, IT IS HEREBY ORDERED that an appeal to the Circuit Court of Appeals of the United States from the decree heretofore filed and entered herein be and the same is hereby allowed and that a certified transcript of the record and all proceedings be forthwith transmitted to said Circuit Court of Appeals at San Francisco.

IT IS FURTHER ORDERED that the bond on appeal be fixed at the sum of \$300.00 as a bond for costs and damages on appeal.

Dated this 3d day of June, 1921.

BOURQUIN,  
Judge.

Filed June 3, 1921. C. R. Garlow, Clerk. By L. R. Polglase, Deputy. [18]

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Thereafter, on June 7, 1921, bond on appeal was duly filed herein, being in the words and figures following, to wit:

In the District Court of the United States, District of Montana.

SARAH POOL,

Complainant,

vs.

JAMES A. WALSH, as Collector of Internal Revenue,

Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS, That we Sarah Pool, as principal, and Ole N. Holt and Sloan Davis, as sureties, of the county of Missoula, State of Montana, are held and firmly bound unto the United States of America, and the above-named James A. Walsh as collector of Internal Revenue, in the sum of Three Hundred Dollars (\$300.00), lawful money of the United States, to be paid to them, and their respective executors, administrators and assigns; to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and each of our heirs, executors and administrators, by these presents.

Sealed with our seals and dated this 6th day of June, 1921.

WHEREAS the above-named complainant has prosecuted an appeal to the Circuit Court of Appeals of the Ninth Circuit to reverse the judgment and decree of the District Court for the District of Montana in the above-entitled cause:

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant shall prosecute her said appeal with effect and answer all costs if she fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and effect.

SARAH POOLE.

OLE N. HOLT.

SLOAN DAVIS. [19]

State of Montana,  
County of Missoula,—ss.

On the 6th day of June, 1921, personally appeared before me Sarah Pool and Ole N. Holt, and Sloan Davis, respectively known to me to be the persons who duly executed the foregoing instrument as parties thereto, and respectively acknowledged each for himself, that they executed the same as their act and deed for the purpose therein set forth.

And the said Ole N. Holt and Sloan Davis, being by me duly sworn, says each for himself, and not one for the other, that he is a resident and householder of the said County of Missoula, Montana, and that he is worth the sum of Six Hundred (\$600.00) Dollars over and above his just debts and liabilities and property exempt from execution.

SARAH POOLE.

OLE N. HOLT.

SLOAN DAVIS.

Subscribed and sworn to before me this 28th day of May, 1921.

[Notarial Seal] DAN J. HEYFRON,  
Notary Public for the State of Montana, Residing  
at Missoula, Montana.

My commission expires October 25, 1921.

Filed June 7th, 1921. C. R. Garlow, Clerk.

Thereafter, on September 14, 1921, a citation was duly issued herein, which is hereto annexed, and is in the words and figures following, to wit: [20]

In the District Court of the United States for the  
District of Montana.

SARAH POOL,

Complainant,

vs.

JAMES A. WALSH, as Collector of Internal  
Revenue,

Defendant.

**Citation on Appeal.**

To JAMES A. WALSH, as Collector of Internal  
Revenue of Montana, Defendant, GREETING:

You are hereby cited and admonished to be and appear at the Circuit Court of Appeals of the United States for the Ninth Circuit to be held at the city of San Francisco, State of California, on the 14th day of October, 1921, pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the District of Montana, from a final decree signed, filed and entered on the 9th day of May, 1921, in the above-entitled suit, being Equity No. 193, wherein Sarah Pool is plaintiff and you are defendant and appellee, to show cause, if any there be, why the decree rendered against the said appellant as in said order allowing appeal mentioned should not be corrected and why justice should not be done to the parties in that behalf.

Dated at Great Falls, Montana, this 14th day of Sept., 1921.

BOURQUIN,  
United States District Judge for the District of  
Montana.

Service hereof admitted September 14th, 1921.

JOHN L. SLATTERY,

Attorney for Defendant. [21]

[Endorsed]: No. 193. In the District Court of the United States for the District of Montana. Sarah Pool, Complainant, vs. James A. Walsh, as Collector of Internal Revenue, Defendant. Citation on Appeal. Filed Sept. 14, 1921. C. R. Garlow, Clerk. [22]

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Thereafter, on September 14, 1921, a praecipe for transcript of record was duly filed herein, being in the words and figures following, to wit:

In the District Court of the United States for the District of Montana.

SARAH POOL,

Complainant,

vs.

JAMES A. WALSH, as Collector of Internal Revenue,

Defendant.

**Praecipe for Transcript of Record.**

To the Clerk of the Said Court:

Sir: You will please incorporate in conformity



with Equity Rule 75 in the Transcript on Appeal in the above-entitled action the following portions of the record in the above-entitled action: Bill in equity, order to show cause, answer, motion to dismiss, affidavits, decision, decree, petition for appeal, assignment of errors, order allowing appeal, bond on appeal, citation, all journal entries, copy of this *praecipe*, together with acknowledgment of service of copy thereon on the appellee.

RUSSELL, MADEEN & BARRON,  
PATTERSON & HEYFRON,

Attorneys for Appellant.

Service hereof admitted September 14, 1921.

JOHN L. SLATTERY,  
Attorney for Defendant.

Filed Sept. 14, 1921. C. R. Garlow, Clerk. [23]

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**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

United States of America,  
District of Montana,—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 23 pages, numbered consecutively from 1 to 23 inclusive, is a full, true and correct transcript of the record and proceedings had in said cause, and of the whole thereof, as appears from the original

records and files of said court in my custody as such Clerk, required to be incorporated in the Record on Appeal therein by praecipe filed, with the exception of the "Affidavits" mentioned in said praecipe, of which there is no record in said cause; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Ten & 85/100 Dollars, and have been paid by the appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Helena, Montana, this 28th day of September, A. D. 1921.

[Seal]

C. R. GARLOW,  
Clerk.

[24]

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[Endorsed]: No. 3780. United States Circuit Court of Appeals for the Ninth Circuit. Sarah Pool, Appellant, vs. James A. Walsh, as Collector of Internal Revenue of Montana, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed October 3, 1921.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.